

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BOBBY BYRD #299312

CIVIL ACTION NO. 18-cv-0748

VERSUS

CHIEF JUDGE HICKS

DARREL VANNOY

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

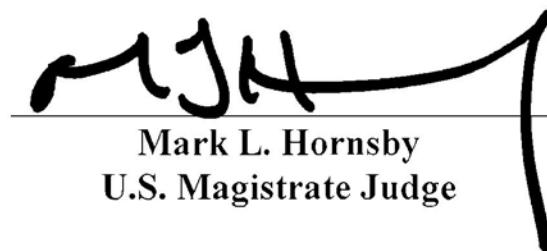
Bobby Byrd (“Petitioner”) filed this habeas corpus petition to challenge his state court conviction and adjudication as a fourth-felony offender, which resulted in a life sentence. The petition asserts claims of insufficient evidence, ineffective assistance of counsel, and knowing use of false evidence by the prosecution.

Petitioner filed a Motion for Evidentiary Hearing (Doc. 3) in which he asked for a hearing to “develop his claims.” The petition is still under initial review, and it is far too early in the process to determine whether a hearing is permissible. Hearings in federal habeas proceedings are rare because review of habeas claims is generally “limited to the record that was before the state court that adjudicated the claim on the merits.” Cullen v. Pinholster, 131 S.Ct. 1388, 1398 (2011). It is ordinarily reversible error for a federal district court to hold a federal hearing to flesh out a claim. Pape v. Thaler, 645 F.3d 281, 288 (5th Cir. 2011). Accordingly, the **Motion for Evidentiary Hearing (Doc. 3) is denied without prejudice**. The court will hold an evidentiary hearing only if, after review of the complete record, it is determined that a hearing is permissible and warranted.

Petitioner filed a **Petition and Order for Writ of Habeas Corpus Ad Testificandum (Doc. 2)** in which he asked that the warden of his prison bring him to this court so that he may be called as a witness to testify at a hearing. This motion is also **denied without prejudice** because it is premature. The court will issue a writ as appropriate in the event a hearing is held in these proceedings.

Petitioner filed a **Motion to Compel (Doc. 4)** that asked the court to require the district attorney to file an answer to his petition. This motion is **denied without prejudice**. The court must first conduct an initial review of the petition to ensure that state court remedies have been exhausted, the petition is timely, and that other preliminary requirements are satisfied. If the court determines, after conducting a review of all such matters, that an answer is warranted, a memorandum order will issue that provides for service on the State and will require a response.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 28th day of December, 2018.



Mark L. Hornsby
U.S. Magistrate Judge